

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
PETITION FOR WAIVER OF	)	CG Docket No. 05-231
REGISTRATION AND CERTIFICATION	)	
REQUIREMENT OF CLOSED	)	
CAPTIONING RULES	)	

**COMMENTS OF CITY OF LOS ANGELES, CALIFORNIA**

**I. INTRODUCTION**

The City of Los Angeles, California (“City”)<sup>1</sup> and its PEG Administrators, (“PEG”<sup>2</sup>) file these comments in support the Alliance for Community Media’s Petition to Waive the Registration and Certification Requirement of the Closed Captioning Rules that are the subject of this proceeding.

The City and PEG are not legally required to caption as they each meet a number of the captioning exemptions found in 47 C.F.R. 79.1(d)<sup>3</sup>. Still, both entities are aggressively moving to

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<sup>1</sup> The City of Los Angeles has a population nearing four million people, an area of 465 square miles, 7,366 miles of streets, and thousands of publicly-owned structures of various types. The City has an Information Technology Agency to support the many aspects of Information and Communications Technology for the City. The Video Services Regulatory Division of the Information Technology Agency is charged with the responsibility to advise the Mayor and City Council on issues relating to the provision of telecommunications, video/cable TV services and private line telecommunications franchises. The Division regulates and monitors compliance of video/cable TV services and franchises issued by the CPUC. More specifically, the Video Services Regulatory Division ensures state video TV service providers comply with local, state and federal laws, and oversees the video/cable TV service interests of the residents of the City.

<sup>2</sup> The City currently has three primary PEG channels providing public programming. LA CityView 35 provides live and repeat coverage of all City Council meetings and original programming related to city departments, events, and services. LA 36 is a public access channel focused on connecting education and cultural resources that meet local needs. University of California Television (UCTV) is a public-serving media outlet featuring programming from throughout the University of California.

<sup>3</sup> See 47 C.F.R. 79.1(d) provides that to be exempt from closed captioning “...any video programming or video programming provider [must] ... meet... one or more of the following criteria....

caption programming on the PEG channels carried by the community's cable operators. And while neither entity believes that any registration or certification under the FCC's closed

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(1) *Programming subject to contractual captioning restrictions.* Video programming that is subject to a contract in effect on or before February 8, 1996, but not any extension or renewal of such contract, for which an obligation to provide closed captioning would constitute a breach of contract.

(2) *Video programming or video programming provider for which the captioning requirement has been waived.* Any video programming or video programming provider for which the Commission has determined that a requirement for closed captioning is economically burdensome on the basis of a petition for exemption filed in accordance with the procedures specified in paragraph (f) of this section.

(3) *Programming other than English or Spanish language.* All programming for which the audio is in a language other than English or Spanish, except that scripted programming that can be captioned using the "electronic news room" technique is not exempt.

(4) *Primarily textual programming.* Video programming or portions of video programming for which the content of the soundtrack is displayed visually through text or graphics (e.g., program schedule channels or community bulletin boards).

(5) *Programming distributed in the late night hours.* Programming that is being distributed to residential households between 2 a.m. and 6 a.m. local time. Video programming distributors providing a channel that consists of a service that is distributed and exhibited for viewing in more than a single time zone shall be exempt from closed captioning that service for any continuous 4 hour time period they may select, commencing not earlier than 12 a.m. local time and ending not later than 7 a.m. local time in any location where that service is intended for viewing. This exemption is to be determined based on the primary reception locations and remains applicable even if the transmission is accessible and distributed or exhibited in other time zones on a secondary basis. Video programming distributors providing service outside of the 48 contiguous states may treat as exempt programming that is exempt under this paragraph when distributed in the contiguous states.

(6) *Interstitials, promotional announcements and public service announcements.* Interstitial material, promotional announcements, and public service announcements that are 10 minutes or less in duration.

(7) *EBS programming.* Video programming transmitted by an Educational Broadband Service licensee pursuant to part 27 of this chapter.

(8) *Locally produced and distributed non-news programming with no repeat value.* Programming that is locally produced by the video programming distributor, has no repeat value, is of local public interest, is not news programming, and for which the "electronic news room" technique of captioning is unavailable.

(9) *Programming on new networks.* Programming on a video programming network for the first four years after it begins operation, except that programming on a video programming network that was in operation less than four (4) years on January 1, 1998 is exempt until January 1, 2002.

(10) *Primarily non-vocal musical programming.* Programming that consists primarily of non-vocal music.

(11) *Captioning expense in excess of 2 percent of gross revenues.* No video programming provider shall be required to expend any money to caption any video programming if such expenditure would exceed 2 percent of the gross revenues received from that channel during the previous calendar year.

(12) *Channels/Streams producing revenues of under \$3,000,000.* No video programming provider shall be required to expend any money to caption any channel or stream of video programming producing annual gross revenues of less than \$3,000,000 during the previous calendar year other than the obligation to pass through video programming closed captioned when received pursuant to paragraph (c) of this section. For the purposes of this paragraph, each programming stream on a multicast digital television channel shall be considered separately for purposes of the \$3,000,000 revenue limit.

(13) *Locally produced educational programming.* Instructional programming that is locally produced by public television stations for use in grades K-12 and post-secondary schools.

captioning rules are necessary, should the Commission seek to enforce such rules, each will comply but note that if they must expend time, efforts and funds to register every programmer, those are resources that might otherwise be employed to caption additional programming.

## **II. BACKGROUND**

The Federal Communications Commission published a Final Rule<sup>4</sup> in the Federal Register on August 23, 2016, imposing new reporting requirements on public, educational and governmental access programming with respect to the closed captioning of video programming on television. These obligations include:

- (1) New requirements to certify compliance with or exemption from the FCC's closed captioning rules;
- (2) Introduction of a "burden-shifting" model for the resolution of complaints about closed captioning; and
- (3) Introduction of a new "Video Programmer Registration" system in which PEG access stations will have to provide contact information into the FCC's website.

The Alliance for Community Media, the national association of PEG programmers and stations, filed a Petition for Waiver from the new reporting rules for all PEG access programmers.<sup>5</sup> The waiver being sought for video programming producers would exempt programmers that are not PEG access stations from both the compliance certification and the registration requirement.

The petition for waiver does not seek to change compliance certification and registration requirements for PEG stations,<sup>6</sup> so much as it is seeking an exemption for those who produce

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<sup>4</sup> Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking [CG Docket No. 05-231; FCC 16-17] ("Final Rule").

<sup>5</sup> Petition for Waiver of Registration and Certification Requirement, Alliance for Community Media ("ACM") (Filed August 25, 2016). Specifically, ACM is seeking waiver of 47 CFR 79.1(m), to be discussed *infra*.

<sup>6</sup> *Id.*, at 2. "We do not dispute the usefulness of registration and certification of exemption status for PEG channels as put forth by the Order. ACM believes this will provide consumers useful and necessary information and will speed the resolution of complaints to Video Program Distributors (VPDs) and the Commission. However, the

video programming for such stations. As was expressed in a previous letter filed by ACM in March of 2016, the absence of an exception for programmers “could mean tens of thousands of ordinary citizens and organizations – Cub Scouts, gospel choirs, political candidates, and community groups of every possible stripe – will be required to certify to the Commission on a yearly basis that their programming is exempt due to their distribution on exempt PEG channels.”<sup>7</sup>

### **III. DISTRIBUTORS OR CHANNELS VS. PROGRAMMERS**

Federal regulations governing cable television largely divide the world into video programming distributors (“VPDs”) and video programmers. PEG access stations are video programmers, not VPDs. Programming owners are defined as entities that either license programming to a distributor, or act as a distributor in licensing video programming intended for households.

So while PEG access programmers are generally *not* considered VPDs, these new regulations are being imposed upon PEG access stations either in their existing role as video programmers, or in their role as program owners. And absent a waiver for video programmers, many thousands of entities offering programming on public and governmental access stations will be required to register with the FCC, as discussed above.

Previously, the obligation to provide closed captioning information fell primarily on VPDs. The obligations borne by video programmers and video program owners were, in most

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registration and certification of these video program owners – most of whom are non-professionals and average citizens who merely wish to use PEG Access channels in their communities – is needless if they are distributing programs on channels that are exempt from captioning under the Commission’s rules, as many PEG channels are.”

<sup>7</sup> The Alliance for Community Media, in a March 28, 2016, letter to the FCC, at <https://ecfsapi.fcc.gov/file/60001560855.pdf>.

respects, subsidiary to the VPD's obligation to ensure closed captioning. In this Final Rule, that has changed. Video programmers have new compliance obligations.

Most significantly, the obligation to provide closed captioning has been broadened from one primarily falling on VPDs to one falling on both VPDs and video programmers, including programming owners. VPDs are responsible for ensuring that 100 percent of new, nonexempt English and Spanish language video programming is closed-captioned.<sup>8</sup> Similarly, video programmers must provide closed captioning on 100 percent of new, nonexempt English and Spanish language video programming.<sup>9</sup> One important reason for this change, the FCC holds, was the ability for video programmers to escape responsibility for closed captioning by providing an indemnification to the VPD, which was previously the entity primarily responsible for compliance.<sup>10</sup> The FCC concluded that closed captioning will improve if VPD and video programmers share in the responsibilities. "By allowing the Commission to take enforcement action against video programmers as well as VPDs, it will create incentives for both entities to take actions within their control to resolve quality problems swiftly and to the satisfaction of consumers."<sup>11</sup>

The Order puts in place new requirements to make certification of closed caption mandatory, and to make such certification directly to the FCC.<sup>12</sup> Previously, video programmers made certifications of compliance with closed captioning rules to VPDs,<sup>13</sup> or alternatively, permitted a VPD to exercise its best efforts to obtain certification of compliance by video

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<sup>8</sup> Final Rule, page 42, new section 79.1(b)(1)(i).

<sup>9</sup> *Id.*, new section 79.1(b)(1)(ii).

<sup>10</sup> *Id.*, para. 13.

<sup>11</sup> *Id.*, para. 14.

<sup>12</sup> *Id.*, para. 20.

<sup>13</sup> 47 CFR 79.1(g)(6).

programmers.<sup>14</sup> Additionally, a third section of the FCC rules governing closed captioning created Video Programmer Best Practices,”<sup>15</sup> and required video programmers who adopted such practices to certify to VPDs that they adhered to such practices by posting such certification on affiliated web sites.<sup>16</sup>

#### IV. PEG PROGRAMMING AND PROGRAMMERS IN LOS ANGELES

The City’s public access channels are managed in part by the City and in part for the community pursuant to a contract with the PEG Administrators. As the chart below reflects, in 2016, more than seventy-five (75) separate and independent programmers have offered thousands of hours of programming on the community’s channels.

Channel	Hours of Programming	Number of Individual Programmers
35 <sup>17</sup>	24/7	10 <sup>18</sup>
36 <sup>19</sup>	24/7	50 <sup>20</sup>
University of California Television (UCTV) <sup>21</sup>	24/7	15 <sup>22</sup>

<sup>14</sup> 47 CFR 79.1(j)(1).

<sup>15</sup> 47 CFR 79.1(k)(1).

<sup>16</sup> 47 CFR 79.1(k)(1)(iv).

<sup>17</sup> LA CityView 35 is the government access cable television channel seen on Channel 35 through subscription to basic cable service in the City of Los Angeles. LA CityView provides live and repeat coverage of all City Council meetings. In addition, original programming related to city departments, events, and services are produced and aired.

<sup>18</sup> Examples of independent programmers on LA35 include: Port of Los Angeles (*Latitudes, Portfolio, Currents*), Connie Martinson (*Book Talk*), LA Metro (*Metro in Motion*), Pet Care Foundation (*Pets*), and other City departments (various programs).

<sup>19</sup> LA36 supports local programming focused on promoting learning through a mix of shows focused on arts and culture, sports, education, and political happenings.

<sup>20</sup> Examples of independent programmers on LA36 include: High School Sports (*St. Genevieve High School*), Collegiate Sports (*Pierce College*), Non Profit Produced Education Shows (*Between the Lines*), Public Access Programming (*Steve Katsos Show, Fusion of Science & Beauty, The Sunday Mass*), Arts and Cultural Programming (*Ford Theatre Series*) County of Los Angeles (*LA Now, Artzone, Let's Go LA*), Live and Taped Distance Learning (*Cal State Dominguez Hills*), School Produced Programming (*USC, CSUN, CSULA, LACC, et al.*), LA36 Produced Educational Programming (*LMU Lecture Series*), and LA City Section Student Sports Shows (*So Cal Prep Report*).

<sup>21</sup> UCTV explores a broad spectrum of subjects for a general audience, including science, health and medicine, public affairs, humanities, arts and music, business, education, and agriculture. Program formats include documentaries, faculty lectures, research symposia, artistic performances and more.

<sup>22</sup> UCTV aired 557 video programs in 2016 from 15 different entities.

Requiring community members, such as independent producers, non-profit organizations, and other municipal entities, who use our channel(s) to register with the FCC and certify that they are exempt from captioning requirements would be cumbersome and a deterrent to many producers who use the channels and serve as a retarding factor to the established congressional intent of creating PEG channels.

This is especially the case because our channel is exempt from the captioning requirement because of our yearly revenue, which falls below \$3 Million. While we appreciate the consumer feedback the registration process will generate, we do not believe that registering PEG access producers on exempt channels will help consumers.

## **V. CONCLUSION**

Nothing in these comments should be read as the City opposing closed captioning. The City is aggressively moving to voluntarily caption programming on the community's PEG channels. The resources required to register every single programmer on our PEG channels and have them certify they are entitled to the Commission's exemptions from captioning would take away assets that might otherwise be used to expand captioning efforts. For these reasons, the City supports the ACM Petition and calls for the Commission to take prompt action to clarify the Final Rule.

Respectfully submitted,

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